

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

SUPREME CT. CASE NO.: 05-555

INQUIRY CONCERNING
JUDGE JOHN R. SLOOP; JQC
NO.: 04-455

_____ /

THE DEPOSITION OF
JUDGE MARK E. HERR

REPORTED BY:
JUNE M. BUFFORD, RPR
In the Office of:
Criminal Justice Center
4th Floor
Sanford, Florida
May 10, 2005
At 3:50 p.m.

APPEARANCES:

LAURI WALDMAN ROSS, P.A.
Two Datran Center, Suite 1612
9130 South Dadeland Boulevard
Miami, Florida 33156-7818
Special Counsel for Florida JQC

LAW OFFICES OF MARC L. LUBET, P.A.
209 Ridgewood
Orlando, Florida 32801
Attorney for Judge John R. Sloop

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X
TRANSCRIPT OF PROCEEDINGS
Deposition held May 10, 2005

TESTIMONY OF MARK E. HERR	
Direct Examination by Ms. Ross	3
Cross-Examination by Mr. Lubet	59
SUBSCRIPTION OF DEPONENT	65
CERTIFICATE OF OATH	66
CERTIFICATE OF REPORTER	67

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 WHEREUPON:
2 The following proceedings were had:
3 MARK E. HERR

4 having been first duly sworn, was examined and deposed as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. ROSS:

8 Q would you state your full name, please.

9 A Mark Edward Herr, H-E-R-R.

10 Q And what's your occupation?

11 A County Judge, Seminole County, Florida.

12 Q How long have you been a County Judge for
13 Seminole County, Florida?

14 A Since January 5, '01.

15 Q And were you elected or appointed?

16 A Elected by the people, September 5, '00. 2000.

17 Q Okay. And were you elected to a county court
18 position or to any other position first?

19 A County court. Group three.

20 Q Before you became a county court judge, how
21 many years did you practice?

22 A Since 1986. So that would make it fourteen and
23 a half years, about.

24 Q And what predominantly were your areas of
25 practice before your election to the bench?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

4

1 A County court, some criminal defense, mostly
2 civil and family law.

3 Q So you had some experience with criminal
4 defense work before appointment to the bench?

5 A Oh, '86 and '87, Office of the State Attorney,
6 misdemeanor prosecutor and a couple months in felony

7 before I went on my own.

8 Q So you had both experience in prosecuting
9 misdemeanors as well as criminal defense work?

10 A Correct.

11 Q And some experience with the system, the
12 criminal system before you were elected to the bench?

13 A Correct.

14 Q At some point in time you were appointed
15 administrative judge?

16 A Right.

17 Q When was that?

18 A July '04. July 1.

19 Q At the time you were appointed administrative
20 judge, was the court system in a series of transition
21 between courthouses?

22 A No.

23 Q At some point shortly thereafter, say about
24 October 1, 2004, was there a system of transition?

25 A During the late summer we learned that we were

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

5

1 going to be expected to move probably some time in
2 September or October. And then that got put off because
3 of some last minute county building issues until the end
4 of November, or mid November. I'm sorry.

5 Q When you say we learned we were about to move,
6 who was going to be moving between courthouses?

7 A All the county judges, civil circuit -- I'm
8 sorry. Criminal circuit and we knew that civil was
9 going to stay down there. All the Clerk's office,

10 traffic and criminal.

11 So they came up with a schedule, and I can't
12 remember when we actually implemented it. I think it
13 was during, starting in either September or October, as
14 late as maybe even November 1, we came out in phases.
15 The State Attorney's Office came first, then the Clerk's
16 office, and finally us. And I think our first month,
17 week in the building, I think, was in November.

18 Q Okay. And as administrative judge, did you
19 issue a series of procedural changes with regard to how
20 to handle traffic citations and bonds where they would
21 be returnable to?

22 A Yes, I think I remember the memo. Yeah. All
23 the, for the field officers and for everyone. I don't
24 have that all at my fingertips, but I do remember --

25 Q I got that for you.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

6

1 A Okay. Good.

2 Q And let me show you. We'll mark the next two
3 exhibits. Where did we leave off. H and I. One is a
4 memo dated July 1, 2004, the other is dated September
5 13th, 2004.

6 A Okay. October. Amended. Right. Had to be
7 amended. Yeah, this is my memory. We thought it was
8 going to be October, it got put off for four weeks till
9 November.

10 Q Okay. Now, explain to me what was supposed to
11 happen originally with regard to the sheriff's office
12 and filling out traffic citations? We're talking about

13 criminal misdemeanors.

14 A Criminal traffic citations and misdemeanor
15 bonds needed as of October, because that was the first
16 week we thought we were targeted to be here until that
17 changed subsequent to this, was to be targeted and
18 re-noticed on their citations and their bond slips from
19 the jail to CJC or Criminal Justice Center, first floor
20 arraignment courtroom. And that's all the information
21 we had early on in July.

22 We didn't know the difference between 1A and 1B
23 because July 1 this place, downstairs was still
24 non-marbled or, you know, didn't have any designations
25 for rooms or any, we hadn't even been in here except

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

7

1 it was a minimum shell. I don't even think I
2 remember taking a tour and it was still plaster drying
3 in the courtrooms with no signs until, I think,
4 September.

5 Q Just so I'm --

6 A May be even October.

7 Q -- clear, when you're talking about here,
8 you're talking about the criminal justice building, the
9 new building that was going up?

10 A Brand new building we're in.

11 Q And the purpose of the first memo dated July 1,
12 2004, was to inform the sheriff's department as to where
13 their citations or bonds returnable should be written so
14 the people would know where to go?

15 A Right.

16 Q And all the information you had is of July 2004
17 was basically what?

18 A A new courthouse address at Bush Boulevard.

19 Q Without a specific courtroom?

20 A Right.

21 Q Now, that order was amended by order,
22 Administrative Order number I.

23 A Uh-huh.

24 Q And what was admitted -- strike that. What was
25 it amended to do?

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

8

1 A The amended was to back it off a month from the
2 first week in October to the first week in November.

3 I should go onto say that starting Wednesday,
4 this is of no consequence, but traffic, civil traffic
5 infraction hearings were still downtown on Wednesday
6 afternoons. That was backed off a month too because we
7 hadn't moved yet.

8 Our hearing officer was over at city hall on
9 Wednesday afternoons and my goal was to get him into the
10 courthouse like they requested and for security. And
11 city hall wanted their chambers back too if we didn't
12 need them anymore, but that couldn't be done, of course,
13 until the move date because there wouldn't have been
14 room to put him back in there yet.

15 Q But understanding this memorandum, if I was a
16 deputy sheriff and I was issuing a citation to somebody
17 who committed a criminal misdemeanor --

18 A Right.

19 Q -- traffic offense, what was I supposed to put
20 on the citation?

21 A Criminal Justice Center, first floor,
22 arraignment courtroom is the best thing we knew to do,
23 so that's all they could do. There was not a
24 designation yet when we wrote this for 1A versus 1B.

25 Q In between the time that you wrote the

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

9

1 memorandum, which is Exhibit Number I, and the end of
2 December, 2004 --

3 A Uh-huh.

4 Q -- did you issue any other amended orders?

5 A Not that I know of.

6 Q So the very last administrative order would
7 have told the sheriff's deputies simply to return it to
8 courtroom, first floor of the criminal courthouse?

9 A First floor arraignment courtroom, right.
10 That's probably the best they had. Unlike the second
11 line that has Courtroom E and for the traffic
12 infractions come to the first floor courthouse to know,
13 to be told where to go on Friday morning because that
14 wasn't decided if we were going to do it on the first
15 floor or fourth floor at that time.

16 Q And the reason for these orders was that, so
17 that sheriffs would have at least some guidance as to
18 where to direct people to go?

19 A Right. It was more of heads up, this is when
20 we're moving. Everybody knew that in this community
21 and this is when it was going to start in November

22 versus October earlier, like we had all hoped or
23 thought.

24 Q But there was no way for anybody to know which
25 courtroom that was going -- strike that.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

10

1 Nobody would know what courtroom they were to
2 show up at for misdemeanor criminal infractions as of
3 November 1, 2004 through December 31st, 2004, because
4 there wasn't any further information due to the
5 construction of the move?

6 A That's right.

7 Q Okay. As of December -- well, strike that.
8 Back up a second.

9 Could you explain to me the taping system in
10 each of the courtrooms?

11 A I don't have the technical knowledge, so I
12 really can't be that technical. It's my understanding
13 from what little I know, is from an administrative
14 standpoint that all of our county and circuit
15 courtrooms, as well as in Courtroom 1A and 1B, are all
16 wired with a Java audio/video system, just as we had in
17 the two county courtrooms, Courtroom A and E in the old
18 courthouse.

19 I don't know if one of them was moved out here
20 or was all pre-wired and ready. I assume it was new,
21 but as far as, when theirs was purchased, when that was
22 all done and when they were put in, that was all
23 construction and county and court administration.

24 Q Let me ask you a more specific question.

25 A Okay.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

11

1 Q Are you aware of the fact that there are two
2 separate taping systems, one by the sheriff's office and
3 one by the clerk's office?

4 A I learned that after we moved in, but I don't
5 know when.

6 Q During the time period you've been a judge,
7 have you ever directed the clerk in your courtroom to
8 turn off the videotaping system while court was in
9 session?

10 A No.

11 Q Do you know of any other judges that instruct
12 the clerks to turn off the videotaping system?

13 A No.

14 Q Have you ever heard of the sheriff's department
15 being directed to turn off any of the videotaping
16 systems?

17 A No, not that I've ever heard.

18 Q Has there ever been a time where you had needed
19 to call for a videotape of something that transpired in
20 your courtroom from anybody?

21 A For my own hearings, the clerk is the only one
22 that I've ever called upon to listen to in lieu of a
23 transcript. Instead of going through the trouble of
24 having the transcription, I just go back and listen to
25 the disk where we all hear our own voices and now you

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 can see on it the desk, every bench, you can see the
2 picture.

3 So no matter whether it's two weeks ago or now
4 in theory two years ago, it's all there and can be
5 brought up video and audio.

6 Q So there's a computerized system to the best of
7 your knowledge where you could call up exactly what
8 happened at the bench on a given day?

9 A Right.

10 Q And even if the video did not play, you would
11 still have the audio?

12 A I think so, yeah. I've done it in hearings so
13 far. I haven't done it a lot, but I've done it.

14 Q And you if needed to hear what, in fact,
15 transpired in the courtroom, you'd be able to call it up
16 on your own computer?

17 A I think so. Supposed to be.

18 Q Have you ever known of anybody to erase those
19 tapes before?

20 A Never.

21 Q I want to go to December 3rd, 2004. Well,
22 strike that for a second.

23 During the time period that you have conducted
24 misdemeanor criminal court --

25 A Uh-huh.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 Q -- how do you issue a bench warrant? What's

2 your common practice --

3 A Okay.

4 Q -- for non-attendance?

5 A All right. Is this a comparative study among
6 the judges? Is that what we're doing?

7 Q No, we're not doing a comparative study.

8 A All right. My common practice, again, I don't
9 know if it's germane or not to your case, but the way I
10 do it, I can't speak for any other judges, and part of
11 my theory is either self taught or what I've seen others
12 in the past ever since 1986 when I learned from other
13 county judges fifteen years ago.

14 At the end of an arraignment session it has
15 become my practice to set aside the files of those who
16 don't show up. I do that for two reasons. One, an
17 organizational purpose because even though I have a
18 pretty good memory, from an organizational standpoint
19 it's easier for me to categorize and get them out the
20 way, set them aside and keep going on with the people
21 who are there. Theory being, why hold up people who are
22 present for those who aren't here and take that time.
23 So from an efficiency standpoint, I usually set the
24 failure to appears aside.

25 Then when the courtroom is cleared, I sit with

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

14

1 the clerk and go over and make sure the person had
2 notice, and if they did, to re-notice them, to issue a
3 capias or issue a bench warrant on what terms on a bond
4 and how high.

5 Q Have you ever followed the practice of calling
6 out a person's name, requesting the deputy to sound the
7 alert for the person and then immediately issuing a
8 bench warrant?

9 A Sometimes at first, not at first appearances
10 and not at arraignments, but farther in the procedure of
11 a case during usually pretrial conference where the
12 groups are smaller, where we have maybe ten or twelve an
13 hour, or especially at trial when someone is due to be
14 there at a particular time, you will say, counsel, have
15 you heard from your client. Sound the halls. Are they
16 there. If no response, I usually put it in a stack and
17 say, we'll deal with it at the end of the hour.
18 Sometimes I just say, if we don't hear from them,
19 they're going to be, we'll note their absence right now
20 on the record and then I end up doing --

21 Q But you, yourself have never followed the
22 practice of at an arraignment --

23 A Not at arraignment.

24 Q -- issuing a bench warrant immediately after
25 the person's name is called --

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

15

1 A I don't know anything right or wrong or
2 different and indifferent about the different ways of
3 doing it, but I, myself have just kind of done it out of
4 habit to set them aside and deal with the folks who are
5 there, leave the folks who are not there until the end
6 of the session.

7 Q I'm just saying if Judge Sloop followed that

8 practice, he didn't get it from you?
9 A No. He had been doing this a lot longer than I
10 have.
11 Q Okay. Let's go then to December 3rd, 2005.
12 A Okay.
13 Q What were you doing the morning of December
14 3rd, 2005?
15 A It was my second week, Friday of my second week
16 of trial docket. I had either, I can't remember if I
17 either picked a jury for that day or I had not picked a
18 jury and used it as a plea day, but remember taking
19 numerous pleas in the morning. Usually I start at nine
20 o'clock, or nine-thirty if it's a jury trial.
21 But I did not have arraignments. It was not my
22 week to go to civil then, so I know by rotation that we
23 were on at that time that I was in my second trial week,
24 Friday and that would have been probably wrap up plea
25 morning for me.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

16

1 Q You would have already moved into this
2 courthouse with all the other county judges?
3 A Right.
4 Q So you were somewhere on the premises in county
5 court?
6 A Right.
7 Q What was the first time that you alerted when
8 you started receiving information from bailiffs, or from
9 courthouse personnel that there were people in Judge
10 Sloop's courtroom who were awaiting arrest?

11 A What I remember is about eleven-thirty when I
12 was done with my pleas in Courtroom 4C, my JA received a
13 phone call, and I was a party to it because I heard her
14 receive the phone call. She told me that there was a
15 message that more people were down in Courtroom 1A.

16 Q Okay. Now, you say your JA. I saw two JAs
17 in adjoining courtrooms, which JA received the
18 message?

19 A Ms. Robinson. Maryanne Robinson.

20 Q And who was the message from?

21 A I assumed it, from the conversation on her side
22 only that I heard, it was from sheriff's deputies.

23 Q You don't know --

24 A But I don't know.

25 Q -- which sheriff's deputy?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

17

1 A I don't know who was on the other line.

2 Q And you happened to be out in the ante-room at
3 the time she got the conference?

4 A I was in my office standing -- you saw the
5 setup?

6 Q I saw the setup.

7 A I'm there, she's outside just, but the door
8 opened.

9 Q As you know the court reporter can't take it
10 down.

11 A Right.

12 Q So I understand --

13 A I'm in the private office, she's in the lobby

14 at the secretary, or JA's desk.
15 Q But within hearing range?
16 A Oh, yeah.
17 Q Can we say about twenty feet away?
18 A More like thirty. Ten yards.
19 Q Thirty feet away?
20 A Uh-huh.
21 Q So you could hear her side of the conversation?
22 A Right.
23 Q And what could you hear?
24 A Not the initial conversation. She told me,
25 Judge, we've got word that there's more people down in

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

18

1 Courtroom 1A that came late, or came here, that came
2 in.
3 Q And this is approximately at eleven-thirty in
4 the morning?
5 A Eleven-thirty. I remember looking at my watch,
6 it was about eleven-thirty.
7 Q And what did she tell you, why was somebody
8 calling you?
9 A Because someone -- and I don't remember.
10 See, the problem is is that there have been so much
11 information that we've received since then, I do not
12 remember explicitly whether it was a number of people.
13 In other words, exact number. Whether she said ten
14 people, whether she said a group of people, I don't know
15 that for sure.
16 Q It doesn't make one bit of difference.

17 A Right. Doesn't matter. She says there are
18 folks that have been, that are in Courtroom 1A that were
19 not there in the beginning, that were, are now here for
20 arraignments.

21 Q And what was she asking you to do?

22 A She was asking me on what, I don't think she
23 was asking me anything. It was more informational than
24 asking me what to do.

25 Q well, somebody was calling your chambers

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

19

1 to alert you to something that was going on
2 downstairs?

3 A Right.

4 Q And --

5 A I believe that it was because Judge Sloop was
6 in my suite of offices at the time.

7 Q Okay.

8 A So it was directed generally -- again, I don't
9 know if this was from the sheriff. See, this is the
10 hard part because I wasn't on the other side of the
11 conversation, whether it was the sheriff, or it was vis
12 a vie through his JA Collette. I don't even know
13 Collette's last name. I don't know.

14 Q You don't know whether it was JA to JA?

15 A Right. I don't know if it was a JA on the
16 other side of the phone or whether it was a sheriff or a
17 deputy explicitly calling to my suite, but she took the
18 message, and I received it simultaneously while she was
19 still on the phone through vis a vie her.

20 Q Okay. Did you start receiving more messages
21 either through Maryanne or through other parties with
22 regard to what was going on in Judge Sloop's courtroom?
23 A Later on, not at that time. This was way later
24 in the morning.
25 Q How much later?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

20

1 A Probably within the next half hour. When I say
2 way later, I shouldn't say, it's not at that exact time,
3 it was by noon by the time, probably when I left for
4 lunch with Judge Eriksson.
5 Q Okay. That was my next question. You and
6 Judge Eriksson went to lunch that day?
7 A Right.
8 Q And the time that you met with Judge Eriksson
9 to go to lunch --
10 A Right.
11 Q -- by that time both of you had heard there was
12 a problem?
13 A Right.
14 Q Correct?
15 A Right. We had an idea that people had been
16 misdirected, misinformed, or weren't in the right place
17 at the right time.
18 Q And did you and Judge Eriksson discuss that?
19 A Yes.
20 Q I mean, Judge Eriksson was the person who first
21 noticed all the extra people in his courtroom that
22 morning, correct?

23 A He most likely did, but I don't remember
24 discussing how he found that out at what time, you'd
25 have to ask him. And I don't remember saying, Ralph,

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

21

1 did you know or didn't you know. All we knew at
2 that point is that they were somewhere in the
3 courthouse.

4 And then we did learn, either at that time or
5 just shortly after that time that they had ended up in
6 his courtroom in 1B, rather than in 1A.

7 Now, again, the time frames of when, that was
8 all learned by everybody else. I don't know that. I
9 only know what I received, not what, you know, not what
10 was in their mind or what they learned.

11 Q I'm not asking that.

12 A I know.

13 Q But did Judge Eriksson tell you that he was, in
14 fact, calling the docket that morning when he noticed
15 that there were a whole slew of extra people in his
16 courtroom?

17 A He mentioned that at some point in time, he
18 realized there was more people on his docket, by the
19 time he got to the end of his docket. And, again, I
20 don't know what time frame that was, whether it was
21 ten-thirty, eleven or eleven-thirty, I don't know. But
22 there came a point in time when there were extra people
23 that were not on his docket.

24 Q Did you and Judge Eriksson try to get word to
25 Judge Sloop?

1 A Yes.

2 Q How?

3 A Judge Sloop, when he left my office, had either
4 heard, although he may not have understood, he heard
5 that there were folks that were in 1A. Whether there
6 was an explanation of where they were from, whether they
7 had come in the front door, whether they had been in
8 Judge Eriksson's courtroom, and that message was
9 received by him, I don't know, because by that time,
10 before Judge Eriksson and I went to lunch, he had left
11 and already gone to lunch, or we assumed he had gone to
12 lunch because he was no longer in the building.

13 Q Okay. Let me just step back for a second.

14 A Okay.

15 Q In terms of time frame.

16 A Yes.

17 Q Was there a point before you went to lunch with
18 Judge Eriksson that you actually saw Judge Sloop?

19 A No.

20 Q So you didn't see him at all that --

21 A No, no.

22 Q -- morning?

23 A No, no. He was in my suite of offices --

24 Q Right.

25 A -- when the message came through.

1 Q When the message came through to Maryanne?

2 A To Maryanne. I believe he was there in my
3 office, and the message at that time that I took away
4 from it before Judge Sloop left and went out the door
5 presumably to lunch, because he was no longer found in
6 the building, was that there was people that had come in
7 late to 1A.

8 It was not clear to me until after he had
9 already left the building that these people had been,
10 what's called now either misdirected, misinformed, or
11 misled, and was in Eriksson's courtroom.

12 Eriksson, that I remember, hadn't come up at
13 that time and Sloop went out, Eriksson hadn't come in
14 yet. See, this is this critical time of eleven-thirty,
15 eleven thirty-five. The message only was there's new
16 people that were in 1A.

17 Q Okay.

18 A Whether they had come in from the outside,
19 whether they had been, none of that had been revealed
20 yet --

21 Q Well --

22 A -- that I know of.

23 Q -- did you see Judge Sloop come back from court
24 that morning, come back up to chambers and be in
25 chambers from eleven to eleven-thirty?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 A No. He came in my office just before that time

2 around eleven-thirty, he was in there.

3 Q He was in --

4 A My chamber room.

5 Q So he was in your chamber room when the phone

6 call came in?

7 A I believe so. He may not have physically been

8 in my office or he was in the doorway of my suite

9 talking, I don't know.

10 Q He was in hearing range of the message when

11 Maryanne called out to you?

12 A He might. Yeah, he probably was.

13 Q Were you present when Olly Csisko came up to

14 tell the judge?

15 A No. I don't remember her ever coming in my

16 suite.

17 Q Do you remember her ever coming in the entire

18 suite of offices?

19 A I sure don't. Sure don't. Because, again,

20 message, not a complete message, an impacted message,

21 John goes out the door, down the hall. Last I see of

22 him until after lunch.

23 Q You don't know whether he had already been told

24 by Deputy Sheriff John Hartman that the people --

25 A No.

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

25

1 Q -- were mistakenly in his courtroom?

2 A No.

3 Q You don't know whether Olly Csisko came up,

4 came up and told him that there were extra people in the

5 courtroom?

6 A No, not that I remember.

7 Q The first you heard was a message while he was

8 in your chambers after court either in your office or in

9 the suite of offices close to you --

10 A Uh-huh.

11 Q -- when the phone message came in that the

12 people were misdirected or in the wrong courtroom?

13 A Right.

14 Q And you don't know if this is the third time

15 Judge Sloop had heard about a misdirection?

16 A No, no. See, I only can tell what happened in

17 my little area in that five, you know, that five minute

18 area.

19 Q That was the first you're hearing of it?

20 A Right.

21 Q And then the first you and Judge Eriksson put

22 two and two together by the time the two of you started

23 comparing notes at noon --

24 A At noon.

25 Q -- Judge Sloop had already left?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

26

1 A He had already been long gone.

2 Q Did you see Judge Sloop in his chambers or in

3 his office eating lunch?

4 A No.

5 Q And didn't see Csisko come in, out during the

6 entire time period that you were there?

7 A No.

8 Q Were there doors where you would have seen her
9 if she came in?
10 A Not necessarily. You see how the office is
11 laid out, if he's in this one that we're in right now,
12 because this was his office right here.
13 Q You have to describe it.
14 A Adjacent to this depo room, he had the middle
15 suite here. Judge Eriksson and I are down in the far
16 suite, so if we're down there comparing notes before he
17 goes to lunch, we'd have no knowledge of what him,
18 Collette and Olly experienced before he left the
19 building.
20 Q Okay.
21 A All this down here.
22 Q But when you put two and two together, it's
23 noon and Judge Sloop is gone?
24 A Gone.
25 Q You don't know whether he already had his

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

27

1 lunch --
2 A No.
3 Q -- sitting at his desk?
4 A Right.
5 Q But he had left the building?
6 A Is what we could understand he had already left
7 the building.
8 Q Okay. What did you and Judge Eriksson do?
9 A We went to lunch and we talked about what could
10 have happened, that's when we, as you say, put two and

11 two together, that if these folks were leftovers on his
12 docket, and they got where they were in 1B the whole
13 time, and then they were sent after Judge Sloop had
14 already left the bench in 1A over to 1A, then that's
15 where we started figuring out, wait a minute, maybe
16 those are the folks that got remanded and those are the
17 folks that were in that transition somewhere in that
18 eleven to eleven-thirty area after he had gotten off the
19 bench.

20 So Judge Eriksson and I compared notes, and I
21 don't remember the exact conversation at lunch, but it
22 was basically, man, this sounds a little confusing.
23 what could have happened. And we talked about it and
24 said, well, the bottom line was as soon as we get back,
25 we'll go and talk to John Sloop. And that's what we

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

28

1 did.

2 Q Okay. When you got back from lunch --

3 A Right.

4 Q -- did the two of you go see Judge Sloop
5 together?

6 A Yes.

7 Q And did you tell Judge Sloop specifically that
8 there may be a problem, that it looks like these people
9 were sent to the wrong courtroom and got bad
10 information?

11 A I thought that I tried to convey that.

12 Q Come on, judge. Tell me the best words that
13 you used with him.

14 A The best words that I used, here's the problem.
15 There were two conversations that day after lunch. The
16 very short meeting between the three of us, I don't
17 think the clerk was yet in the room at one-thirty down
18 in the video conference room. Was down in the video
19 room on the third floor, the three of us were in there.
20 John Sloop was already seated -- seated starting to read
21 because his session was about to start at one-thirty.

22 Q And those were the first appearance sessions in
23 the afternoon?

24 A First appearance on video sessions.
25 We started to discuss what may have happened,

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

29

1 whether it was misdirection, oversight, what happened.
2 Judge Sloop, the last thing I remember him saying, I'll
3 be up as soon as I get this session done and we'll
4 address it.

5 Then we had a subsequent meeting in my office,
6 the three of us, Sloop, Eriksson and me, although my JA
7 was not present in the room, she was just outside with
8 the door opened, and we talked about what really
9 happened and he made the decision, John did, to recall
10 the warrants.

11 Q Wasn't he initially skeptical that the people
12 had gotten misdirected?

13 A I believe that that was at the one-thirty
14 session, he had expressed concerns, yes, how do we know
15 that these folks just didn't walk off the street and
16 come in late.

17 Q Now, at this point, again, you don't know
18 whether a deputy sheriff had already told him, I've
19 looked at the paperwork --

20 A No.

21 Q -- they were sent to the wrong courtroom?

22 A I have no direct knowledge of this. Although I
23 start to hear the rumors that these people were really
24 misdirected, wrong courtroom, not just walking in off
25 the street, especially if there was more than one or two

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

30

1 making the same error, or late, tardiness, that they
2 actually were, they could have been misdirected. So,
3 yeah, it started to, you know, started to say, hey, we
4 really could have a problem here.

5 One-thirty we talked, it was literally a minute
6 or two, down in the video room. He agreed to come back
7 up as soon as he was done. He was done, because I
8 remember him coming in at 3:00 or 3:05 and that's when
9 we all, he made the decision to say, fine, I'm recalling
10 the warrants. They were prepared and signed.

11 Q Who prepared the warrants?

12 A I think the clerk, I believe, I remember the
13 clerk from first appearance who was, I only know her by
14 Grace. I don't think I even know her last name after
15 all these years. I think Grace who was in with him that
16 day, I don't think it was his trial clerk Debbie, I
17 think it was Grace who came up and prepared them. But I
18 don't know that. Again --

19 Q Did not you ask the clerk to prepare paperwork

20 to recall the warrants?

21 A Did I do it.

22 Q Yes.

23 A I may have. I sure don't -- I believe that I
24 said if that's your decision, let's get it done. And I
25 may have given the direction to do it, but it was his

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

31

1 decision to sign them and do them.

2 Q That's not what I'm asking.

3 A Okay. Did I actually direct Grace to do it?

4 Q Yes. There was a very short conversation at
5 one-thirty where you and Judge Eriksson --

6 A Met with Sloop.

7 Q -- met with Sloop.

8 A Downstairs.

9 Q Correct. And he voiced skepticism over the
10 fact that all these people could have been misdirected
11 or lost?

12 A He questioned that, right.

13 Q He questioned that.

14 A Okay.

15 Q But he told you he'd deal with it after he got
16 off the bench?

17 A He wanted to finish his one-thirty session and
18 he'd be up and we'd put our heads together. We all
19 agreed on that.

20 Q Okay. But in the interim while he was still
21 doing first appearances, he didn't direct the clerk to
22 prepare paperwork, you directed the clerk to prepare

23 paperwork, didn't you?

24 A May have been, may have been. I don't remember
25 how it got done, I just remember that we all agreed at

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

32

1 three o'clock that it needed to be done.

2 Q Didn't he question whether or not you should
3 sign the paperwork at all because they were his cases?

4 A No, he didn't question that, Judge Eriksson and
5 I did because it was thought that I didn't have
6 authority.

7 Q Okay. Since he had --

8 A It wasn't my cases. He issued them. No one
9 collateral or an even a judge, judge on the same level
10 can overrule another judge. I was reminded and I said,
11 that's absolutely right.

12 Q But in order to be reminded of that, judge, you
13 had to have been preparing or anticipating --

14 A Somebody to do it.

15 Q -- signing --

16 A You're right.

17 Q -- those documents yourself? Or having
18 somebody else sign those documents?

19 A Okay. I understand what you're saying. It
20 should have been done. I don't know how you want to say
21 it. If it was in my mind thought to do it, and that was
22 the right thing, I thought to do it if it were me, then,
23 yes, but I don't remember. I tell you, I don't remember
24 actually giving the order to do it, but that may have
25 been going through my mind to say, someone needs to do

1 it, let's get the right person to do it, who would that
2 be.

3 Q Okay. And the only reason the issue of your
4 jurisdiction to sign those documents would have come up
5 is if you were contemplating doing it in the first
6 instance whether as administrative judge --

7 A Okay. Right. I see what you're saying.

8 Q Correct?

9 A Yeah, it went through my mind, absolutely.

10 Q And you understood that if these people were
11 wrongfully arrested because they were in the wrong
12 courtroom, that this needed to be accomplished as soon
13 as possible, their release?

14 A Sure. I agree with that.

15 Q There's no reason why you'd want people to sit
16 in jail --

17 A Right.

18 Q -- for a wrongful arrest.

19 A Right. At that point, I wasn't clear on
20 whether they were, where they were, and I probably
21 naively assumed they were still downstairs being held in
22 the holding cell. We subsequently learned that they had
23 long been taken over next door to the jail.

24 Q Would you agree that you naively assumed that
25 because you wouldn't have assumed that a judge would

1 have them arrested and transferred over to jail based
2 upon questionable location?

3 A I did not think about motive at all.

4 Q Motive is not what I'm asking.

5 A Okay.

6 Q What I'm saying to you is a matter of common
7 sense.

8 A Yeah.

9 Q And that as a matter of common sense, you would
10 imagine that somebody would not have eleven, twelve,
11 thirteen, a whole group of people mass arrested and
12 transported to the jail until they correctly figured out
13 a situation that you had questioned, another judge had
14 questioned, and you don't know if other people had
15 questioned?

16 A I don't know how to answer that. It did not
17 make sense to me and all I wanted to do was to get to
18 the bottom of it when I got everybody in the room, and
19 the only regret that I have is it didn't happen until
20 three o'clock.

21 Q Okay. And when you say it didn't happen until
22 three o'clock, you mean that the paperwork wasn't signed
23 until three o'clock?

24 A Well, until we got everybody back in the room
25 and we put all of our heads together and we all agreed

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 that that's what happened, and that the paperwork then
2 could be executed by the right people.

3 Q Confronted with information that the people
4 were in the wrong courtroom may have been misdirected,
5 may have been provided information from deputy sheriffs
6 that was inaccurate as to what courtroom they were
7 supposed to be, wouldn't you have dropped everything and
8 dealt with it immediately?

9 A would I have done it that --

10 Q Yes.

11 A what I would have done personally?

12 Q You bet.

13 A Probably so. I can't, hindsight is 20/20, but
14 I don't think in my practice the way I've done, I
15 wouldn't have done it that way in the first place and it
16 would have never gotten that far I would have not hoped
17 because I would have dealt with it in the morning --

18 Q That's my point.

19 A -- in a different way.

20 Q You would have dealt with it right off the bat
21 immediately as soon as the issue was raised, and you
22 wouldn't have let it linger through another court
23 session with people, at best, in a holding cell
24 downstairs?

25 A I probably wouldn't have done that, right.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

36

1 Q Now, when you got -- strike that.

2 when Judge Sloop signed the release orders --

3 A Uh-huh.

4 Q And he actually signed the release orders,
5 correct?

6 A Right.

7 Q When he signed the release orders, was the
8 first time you discovered that the people had been taken
9 to jail?

10 A Yes.

11 Q How hard is it to get people out of jail?

12 A That's a very good question. I bonded one
13 client out in the nineties and I waited for an hour or
14 two, but I have no idea. This is something that we have
15 since learned that it is difficult now, again, I don't
16 question the Sheriff's, I don't know enough about the
17 Sheriff's situation, and maybe as administrative judge I
18 should, but when we sent, when the orders were sent over
19 from my office because that's where they were executed,
20 I again maybe naively assumed that these folks would
21 have been released upon receipt of those orders.

22 Q Now, you understand that the jail has their own
23 administration and their own regulations and their own
24 procedures to follow?

25 A I guess I do now.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

37

1 Q But at the time --

2 A At the time, I didn't realize that they were
3 already over there booked in. Even after lunch and even
4 though -- well, it would have been three hours and a
5 half that had gone by, now I have put that together
6 since then, three and a half hours, but, yes, if they
7 are already booked into the jail, then now I know that I
8 realize that if they're already in the process then,

9 yes, they have to be backed out of the jail. But we
10 didn't know that at the time. I didn't realize until
11 the orders were signed that they were already over to
12 the jail.

13 And, again, I was hoping that they were still
14 downstairs. When I realized they weren't, they were
15 faxed over to the jail. I don't remember if Maryanne
16 did that or the clerk did that.

17 Q Didn't you direct someone to do that?

18 A I believe I directed one of the two to do that
19 in order for efficiency sake to make sure they got it
20 over there since I realized they weren't downstairs
21 anymore in holding, and they were over there, someone
22 did it for me. I don't know if it was Maryanne or the
23 clerk.

24 Q And did you have that done in your capacity as
25 administrative judge?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

38

1 A No. I did that because I was the one there at
2 the time. You could call it administrative judge. I
3 just did it as the one who had the personnel there in my
4 office at the time. So because I guess I took the bull
5 by the horns you might say and said someone's got to get
6 those over there, and if the clerk did it or Maryanne
7 did it, I don't remember which one actually physically
8 fed them into the fax, but the goal was to get them over
9 there.

10 Q You wanted to get them there as soon as
11 possible?

12 A Absolutely.

13 Q And that's why you directed them to be faxed
14 over?

15 A Faxed instead of -- that's the quickest way we
16 know to get them over there. At least I know now.

17 Q Do you know how many people told Judge Sloop
18 that there was a problem before he agreed to sign
19 release orders?

20 A No, not exactly.

21 Q Generally?

22 A Me, Ralph, and, of course, the message from
23 Maryanne is all, or Eriksson and me, and Maryanne on the
24 phone simultaneously with him in the room, that's all
25 that I have actual knowledge of.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

39

1 Q And those are the three instances that you know
2 about before Judge Sloop --

3 A Right.

4 Q -- issued the release orders?

5 A Right.

6 Q And your contact with him was at one-thirty
7 when you apprised him of the mistake, that was the
8 second time you know about because when the call came
9 from Maryanne, he was there?

10 A Right.

11 Q And it still took until three o'clock to do
12 anything?

13 A Yes. Because he had to finish his one-thirty
14 session which was about to start. I presumed everyone

15 was waiting for him at video on video. The State is
16 over there, the prisoners are over there for the first
17 appearances, and he promised and agreed to come back up
18 as soon as he was done.

19 And the fact that it was between one-thirty and
20 three, that's actually fast for a video session. I got
21 done today at three-thirty and that's usually fast for
22 me. Sometimes it's four or four-thirty. So at three
23 o'clock, he was back in my office with Eriksson, I and
24 him together.

25 Q We can agree that a first appearance, that's

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

40

1 a fast first appearance session of one and a half
2 hours?

3 A Uh-huh.

4 Q But it's not a fast period of time in order to
5 take care of releasing people who are wrongfully
6 arrested, correct?

7 A Is it not a fast time to take care of
8 something, I don't know. If you knew about it then
9 you're asking me is that too slow to act, I guess so in
10 hindsight.

11 Q If you're sitting in jail one and a half hours
12 is a pretty long time, isn't it?

13 A In hindsight knowing that, now in hindsight,
14 yes, that was a delay, right.

15 Q And, again, you don't know how many times Judge
16 Sloop was told there was a problem?

17 A No. Not other than when he left my office at

18 eleven-thirty and we talked to him again at one-thirty.
19 Q Okay. Did you hear Judge Eriksson say to Judge
20 Sloop -- I'm sorry. At any point in time, did you tell
21 Judge Sloop or did you ask him do you really want to go
22 to do first appearances while this is pending?
23 A Did I ask him --
24 Q Uh-huh.
25 A In other words ask him to forego or --

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

41

1 Q Do you really want to go do first appearances
2 right now instead of taking care of this?
3 A I don't believe, I don't remember uttering
4 those words.
5 Q Okay. Did Judge Sloop ever respond to you in
6 any way that the people were due in court, it was their
7 responsibility to get to the right courtroom and they
8 weren't there?
9 A The only discussion I remember in depth,
10 because again, all we agreed to do downstairs at
11 one-thirty was for him to get back up and let's do it as
12 soon as he got done, to readdress this.
13 He did question in my office as to still
14 whether the reason for the misdirection or how it
15 happened, or what the story behind the story was on why
16 they were there when they weren't there, and the fact
17 that they weren't there when he had signed the warrants,
18 he was still kind of mulling it over as to what, how it
19 could have happened this way. In other words, I don't
20 know whether he questioned -- see, you're asking me to

21 think what's in his mind. I don't know what was in his
22 mind.

23 Q I'm not asking you to think what's in his
24 mind.

25 A But I --

ASSOCIATED COURT REPORTERS, INC.
(407) 323-0808

□

42

1 Q I'm asking you in the context of him voicing
2 skepticism whether at one-thirty or three o'clock --

3 A Right.

4 Q -- did he make the statement to you and/or
5 Judge Eriksson in your presence, that these people were
6 due in court, that it was their responsibility to get to
7 the right courtroom, and they weren't there.

8 A I don't remember those exact words. What I do
9 remember is expressed skepticism because how do, his
10 thought was that I received was how do we know that they
11 were really misdirected, and how do we know that they
12 weren't from somewhere else, i.e., just coming in the
13 door, or how do we know that they weren't really late,
14 and I had already issued warrants and ruled and left the
15 bench. So there was some talk about which category are
16 they in.

17 Q I know that you don't remember those precise
18 words, do you remember him saying words close to that
19 where he dug his heels and tried to defend his
20 decision?

21 A Well, again, I hate to couch it in those terms
22 because what he did was he was expressing skepticism on
23 whether it really happened the way it happened.

24 Q Did you ask him whether he did anything to
25 inquire?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

43

1 A No. No.

2 Q Did you ask him if he took one, if he was
3 concerned if he took a look at the paperwork?

4 A No, I did not. I don't remember asking that.
5 what I impressed upon him was I remember saying the
6 words, John, it doesn't matter what the reason was. It
7 doesn't matter if it was a mistake, if it was a
8 misdirection. If we think now it was a misdirection,
9 let's error on the side of caution and let's undo it and
10 he then agreed.

11 Q And you can understand very simply how it could
12 be as a result of misdirection because you still had
13 sheriffs writing tickets that simply said go to criminal
14 courthouse without a courtroom on it?

15 A Could have been. If they got misdirected at
16 the door because -- it doesn't matter, it didn't matter
17 to me.

18 Q It could have very easily happened exactly the
19 way the people said?

20 A Could have been. whether it was by verbal or
21 on the ticket written, it did not matter to me at that
22 time. I didn't even think that specifically about it.
23 My goal was to talk to John to see if it couldn't be
24 reversed because of the abundance of caution to undo
25 what had been done.

1 If there was a possibility that they were
2 misdirected, let's error on the side and get it
3 reversed. And I guess with my only three or four years
4 experience I guess I naively thought, because it's never
5 happened to me, that by reversing it it could have been
6 undone either downstairs or at the jail quicker than it
7 was. I really, and now I'm a little more educated now,
8 but I really in my heart thought that by the end of the
9 day these folks would have been released on the faxed
10 over order.

11 Q Okay.

12 A I believe that, I think that we confirmed that,
13 someone confirmed that either Maryanne or the clerk that
14 the orders were received over there.

15 Q Did you call to see whether --

16 A I didn't personally, but I think my office
17 confirmed that those faxes were received in booking, the
18 order reversing this.

19 Now, we have since learned that there was some,
20 at some point in time before, during or just shortly
21 after, Judge Perry also got involved and also gave
22 orders to have them released unilaterally as chief judge
23 without, just what he heard, he acted, okay.

24 So I don't know which one came first, which
25 crossed in the wires of the fax machine, how the message

1 was received, but I went home that day thinking and
2 believing that it had been undone.

3 Q Now, when the order was faxed to the jail --

4 A Orders. I think there were one for each case.

5 Q Orders. Did anybody call to follow up to see
6 if those orders were expedited?

7 A I don't know specifically the word expedited.
8 The only thing that I remember is either my office,
9 Maryanne or the clerk confirmed that they were received.
10 And that they confirmed that they got them and so I
11 maybe again assumed and, or was confident that they
12 would be followed up.

13 Q Now, did you bring or do you have any phone
14 messages from that day?

15 A No.

16 Q Any phone log that would reflect the phone
17 calls that were made to or from your office from other
18 judges, deputy sheriffs, other people about this
19 incident?

20 A No.

21 Q You double checked --

22 A I double checked and --

23 Q -- and you got nothing?

24 A Nothing.

25 Q Checked your e-mails to see if there was any

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1 e-mails between you, other judges about this
2 situation?

3 A No. I didn't have time to do all that. I
4 mean, I have since checked, but I didn't have time to
5 physically write an e-mail or receive an e-mail in
6 those two little, one-thirty, eleven-thirty,
7 eleven-thirty, in chronological order, one-thirty
8 downstairs, no place to do that, and the three o'clock
9 session.

10 Q Did you speak to Judge Sloop about expediting
11 the orders or doing anything to follow up?

12 A I think we left it that these orders were going
13 to be faxed over and we confirmed they will get them and
14 we wanted -- but speaking to him directly about how to
15 carry them out, no.

16 Q How did Judge Perry learn about what happened?

17 A I don't know. I don't know how he learned
18 about it and at what point in the day he learned about
19 it because I didn't talk to him until much later on
20 about this. And I can't remember if it was over the
21 weekend when it hit the paper, or I think I did. I
22 think I talked to him over the phone over the
23 weekend.

24 Q Okay.

25 A But I never understood at what point in time he

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

47

1 got involved with the jail because he did that
2 separately from his office downtown.

3 Q So you don't know whether the sheriff's office
4 apprised him separate and apart?

5 A Don't know that.

6 Q But you didn't call him?
7 A No.
8 Q To the best of your knowledge, did Judge
9 Eriksson --
10 A I did put in a call to Judge Perry.
11 Q When?
12 A It was probably some time between the
13 one-thirty and three hour, but I don't think I ever
14 reached him. I only left a message looking for him.
15 Q Why did you put in a call to Judge Perry?
16 A Just for advice. Apprise him of the situation
17 that we were going to meet with John when he got out of
18 first appearances, and in case he heard anything -- in
19 hindsight, again, I wasn't even thinking that he had
20 heard anything, I just wanted to run this by him because
21 he's our chief judge. I guess it just was natural for
22 me to call him, call him up and see if I can run
23 something by him.
24 Q Well, you understood this was serious. I mean,
25 this was not --

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

48

1 A well --
2 Q This was not a minor glitch?
3 A No, I understood it was serious when I realized
4 after lunch that they had been remanded, that if it was
5 a misdirection that these people were being helped.
6 Again, when I came back from lunch, it was my hope
7 against hope that they hadn't been booked into the jail
8 yet, that hopefully they were still downstairs being

9 helped.

10 Now, I understand in hindsight that was naive
11 of me to think that and I'll never make that assumption
12 again. But, again, it's because this has never happened
13 to me in my four years, or five years now on the bench.
14 It just never crossed my mind on how fast these things
15 occurred on a remand.

16 When I remand somebody it's for a long sentence
17 and I've never had one come back on me. So, again, it's
18 just something that I've never experienced in my short
19 tenure.

20 Q Who's your mentor judge?

21 A Seymour Benson. And he was only here a year
22 before he retired.

23 Q Okay. And how long did you share adjoining
24 chambers with Judge Sloop?

25 A Adjoining chambers?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

49

1 Q Well, the same chambers, same area?

2 A You mean over the years?

3 Q No, no, no. Here.

4 A Here?

5 Q Uh-huh.

6 A We were only here from November until he was
7 reassigned December 6th. So he had this group down here
8 by himself. Eriksson and I are down there. Marblestone
9 and Bravo are on the other side of the building. So
10 never actually shared a suite with him. None of us did.
11 He was by himself here from November until December 6th

12 when he was reassigned.

13 Q Okay. But I thought, and correct me if I'm
14 wrong, when he came back up from court and he was in
15 your room --

16 A At three o'clock?

17 Q No.

18 A Okay.

19 Q When he came back from court at eleven-thirty
20 to hear the phone call from Maryanne, you said you were
21 in the same suite of office?

22 A Oh, yes. How long was he there in that
23 session.

24 Q Yes.

25 A Yes. It was probably not more than three or

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

50

1 four minutes. He came in to say, hi, how you doing.
2 It's Friday. He's done. He realized I was in second
3 trial week and I was done. Hi, good bye, and that's
4 when the phone call came in.

5 Q And I thought it was he and you in that same
6 general area sharing chambers at that time, and why he
7 was there, do I have that wrong?

8 A I don't remember his exact position at this
9 point at my desk versus the door out from Maryanne and
10 Doris' office which would be just beyond these doors
11 here. I don't remember if he was at the front of her
12 desk in her lobby, suite area, or in my doorway, but
13 that's about the time I remember, judge, there's a
14 situation down in 1A, dah, dah, dah, dah, dah.

15 MR. LUBET: Judge I think she was concerned
16 with you sharing a suite with him. You weren't
17 sharing a suite?

18 A No. No.

19 Q My understanding based on your description
20 before is --

21 A He was just visiting.

22 Q -- he came up, he came upstairs from the bench,
23 he popped into your chambers and he was there in your
24 chambers at the time the phone call came into
25 Maryanne?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

51

1 A Right. His office was in this middle suite.
2 He was by himself at the blank office next door.

3 Q Okay.

4 A He came down to visit and was only there a
5 short time.

6 Q So if Olly Csisko came into his chambers to
7 tell him what was going on, it was completely separate
8 from your office?

9 A Right. Right.

10 Q You wouldn't have seen her come, you wouldn't
11 have seen her go?

12 A Right.

13 Q And if that preceded your involvement, you
14 would have no way of knowing?

15 A No way of knowing, right. Yeah, the suites, I
16 understand what you're saying. He was there visiting in
17 my suite, but he did not occupy that suite. He was down

18 here in the separate suite.

19 Q Before you came to this building, where in
20 conjunction to Judge Sloop's chambers were you located?

21 A The old building, the four of us were in a pod
22 and I don't know if you know the configuration of the
23 old courthouse, you probably don't.

24 Q No.

25 A We're in a four-way suite down in county

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

52

1 chambers between Courtroom A and E. The four of us
2 were, the same four that are here now. John was down in
3 Judge Hitt's old chambers down the hall about thirty
4 yards away, not even twenty yards down the hall to the
5 right, closer to the main lobby of the courthouse.

6 Q Okay. So the four of you during your four
7 years --

8 A He moved there because he took his office where
9 Judge Hitt used to be. And so as the new judge I would
10 be with the other three and he decided to move down the
11 hall by himself and it was agreed.

12 Q Do you know how many people were arrested on
13 December 2nd because they didn't respond?

14 A I had no knowledge of December 2nd. Even after
15 this happened and we talked at three o'clock on December
16 3rd, I knew nothing. That was all after the fact.

17 Q You didn't know anything about there were other
18 people --

19 A No.

20 Q -- who were arrested on December 2nd who

21 couldn't get out of jail?

22 A No. No one had brought that to my attention
23 and I never heard about that until after the fact.

24 Q Okay.

25 A Well after the 6th.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

53

1 Q Did you ever question Maryanne about who called
2 her?

3 A No, not directly. I assumed it was the
4 sheriff's office because the way she said it was there's
5 folks downstairs, so I didn't think it was the clerk
6 because the clerk would already have left with him, and
7 it certainly wouldn't have been from his office, maybe
8 it was Collette calling him, I don't know, but I had
9 just assumed it was the sheriff calling.

10 Q And you've never found out to this date who
11 placed that phone call to Maryanne that she was
12 responding to?

13 A Not the exact identity name, no.

14 Q Even if it wasn't the exact identity name, did
15 you find out from her whether it was the sheriff's
16 office --

17 A Never asked her.

18 Q -- or it was the JA, you never asked a
19 question?

20 A No. I guess I never -- since it was courthouse
21 personnel, it really didn't even dawn on me whether who,
22 rank, name and serial number who it would have been, or
23 sheriff versus clerk. It had to have been one of them

24 by process of elimination. The only other possibility
25 it could have been was Collette, but I don't know.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

54

1 Q And for the record who is Collette?

2 A Collette is Judge Sloop's JA.

3 Q Okay.

4 A Collette --

5 MR. LUBET: Colgrove.

6 A Colgrove.

7 Q Okay. So the phone message could have come in
8 from Collette who was the JA for Judge Sloop that there
9 was a problem?

10 A Could have been.

11 Q But probably not?

12 A Probably not.

13 Q Probably not?

14 A Right. I took it to mean by the tone of the
15 conversation that it came from downstairs, therefore, it
16 would have been the sheriff.

17 Q Okay. And at any point did you and Judge
18 Eriksson, either one of you, step into Judge Sloop's
19 courtroom to see exactly what was being carried out in
20 there?

21 A No. Didn't see that until on the video, on the
22 news after the fact when it came out on the news. No.
23 See, remember I was up here for my session I had done on
24 the fourth floor.

25 Q Right.

ASSOCIATED COURT REPORTERS, INC.

1 A I never went down to the first floor that day.
2 No reason to. Judge Eriksson and I subsequently learned
3 it was in 1B, and that obviously in hindsight is where
4 the people were misdirected to and sat, and you can ask
5 him about how that all happened because never, we never
6 went, I never went down there.

7 Q By the time Judge Sloop finally issued the
8 release orders at three o'clock, do you know how many
9 people had told him that the people were misdirected?

10 A How many, no. All I know is it was me, Ralph
11 Eriksson and Maryanne. Now, we have since heard since
12 then that many others tried to tell him, but I don't
13 have any knowledge of that at that time at that day.

14 Q Do you see a distinction between making a
15 mistake and digging your heels in it when multiple
16 people had told you there is a problem?

17 A Sure. Sure. It's an attitude of, you know,
18 attitudinal difference of do I forgive and forget and
19 bend and say fine. If I made a mistake, I'll do it. Or
20 is it, you know, I may be right and I'm not sure if
21 they're still wrong and -- it's an attitudinal thing in
22 which way you bend. Sure.

23 Q Would you agree with me that it would be
24 clearly wrong to insist on having people arrested if
25 they were, if you knew that they were in the wrong place

1 at the wrong time?

2 A Sure. It wouldn't be good at all. If you knew
3 for sure that there was a misdirection, then, you know,
4 it was not something that someone should do.

5 Q And certainly not something that would make the
6 judiciary --

7 A Of course not, no.

8 Q Now, notwithstanding all of that, you know
9 Judge Sloop, you've seen him in action for a long period
10 of time, do you believe that he is still fit to be a
11 judge?

12 A I still think he's got good judgment. I still
13 think he knows the difference between right and wrong,
14 and his philosophy may be different than others, but I
15 still think he can make command decisions and be fair
16 and honorable. Whether he did that in that case or not,
17 that's what you all got to decide, I guess.

18 Q And would you agree with me that if his command
19 decision was based on a philosophy as better to throw
20 them in jail and teach them a lesson, that that is a
21 problem?

22 A I just don't want to comment on what is good or
23 bad. I know what I would do and not do.

24 Q Okay.

25 A That's all I can say.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

57

1 Q It's certainly not something you would do?

2 A I just am not cut out that way and I don't
3 think it would ever be my philosophy to do that. Mine

4 would be more error on the caution of more, not naive,
5 but more of attentive situation. That's just my
6 personality.

7 Q And to be completely fair, you think that he's
8 a good judge, you think that there's no impediment for
9 him continuing to sit?

10 A In the big picture, I don't think so. If he
11 needs some reeducation, if he needs some retraining, if
12 he needs some refocus, I think that can be done and
13 should be done. But in the big picture, I don't think
14 unfitness is the right word.

15 Q Okay. So it would be, let me restate it. You
16 think he's rehabilitatable?

17 A Exactly. There's a good word.

18 Q Okay. And he's salvagable in terms of --

19 A Absolutely.

20 Q -- judicial philosophy --

21 A Again, see, I'm in an unfair position, not just
22 because of a colleague, but he's been doing this longer
23 than I have, so I have to defer to that, you know.

24 Q But you understand that --

25 A Sure.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

58

1 Q -- experience doesn't always make somebody
2 right?

3 A No, that's right. No.

4 Q If you had anything else to add with regard to
5 Judge Sloop's character, please give me, you're under
6 subpoena and give me the benefit of your observations.

7 A It's not about so much about character because
8 he's always been honorable. The observations or the
9 perception is that he's harder or tougher than somebody
10 else shouldn't be the issue because he has a different
11 philosophy than Judge A, B or C and D and he's Judge S,
12 that shouldn't be the focus.

13 Q I couldn't agree with you more. I do agree
14 with you on that.

15 A But from an honor standpoint --

16 Q That's --

17 A -- I still think --

18 Q That's what I'm questioning you for. I don't
19 think that the JQC or I, myself, as the special counsel
20 are looking at somebody's judicial philosophy in terms
21 of prosecution. I simply want to know from your
22 perspective, put yourself as his character witness for a
23 second and give us the benefit of what you think of
24 Judge Sloop.

25 A I still think he's fit. I still think he has

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

59

1 integrity. I still think he goes above and beyond.
2 Does he have, can he better himself even after fifteen
3 years, sure. Can he do things differently, yes. But I
4 still think, you know, he can be trusted to make
5 decisions.

6 Q And you would look at this as a serious mistake
7 but not one which is career ending?

8 A Right.

9 Q Okay.

10 A Absolutely. Okay. Does that help?

11 MR. LUBET: Judge, I just have a couple
12 questions for you.

13 JUDGE HERR: Yeah. Go ahead.

14 CROSS-EXAMINATION

15 BY MR. LUBET:

16 Q Judge, did you know at the time, based on your
17 previous answer to a question, did you know at the time
18 how long it takes a person to get out of jail once
19 they're incarcerated, once the sheriff has them?

20 A No. And I still don't know how long it takes
21 in every case because the little bit of criminal defense
22 that I did do before I came on the bench, and bonding
23 out clients, you know, I know there's a waiting period
24 in the normal course of an arrest off the street, but, I
25 guess, I, again, am a little more give the benefit of

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

60

1 the doubt to those who I've got the power to order and
2 when I ask somebody to be released, I guess I just
3 assumed in my experience that, and I don't know this,
4 but that that it would be done in not post-haste with
5 due diligence.

6 And when an order got sent over at three
7 o'clock especially in this situation, although, you
8 know, I don't know why it would be any different, but
9 why would it take more than an hour or two, unless there
10 was something really, something they got caught with or
11 something happened at the jail during the booking
12 process because if it is an arrest from court, and

13 within an hour or two or three hours at the most, four
14 hours at the outside, somebody got the message over
15 there vis a vie fax that the judge who did this is
16 undoing it, I would hope that it doesn't take that
17 long.

18 still when I heard that it was eight o'clock
19 and eleven o'clock I couldn't believe it and I've since
20 asked some folks and made some inquiries over is that
21 standard. Now, since then Major Diggs who was my best
22 contact at the jail, he's retired, so I haven't been as
23 diligent as following up on this because we've been so
24 darn busy here because of the rotation changes.

25 Q Sure.

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

61

1 A We're getting our new county judge, but that's
2 not until next year. We found that out Friday. And so,
3 but we've been so busy, I really haven't been able to
4 make a lot of progress.

5 But I guess I just thought that if you send
6 over an order they know it's there, that they would have
7 honored that with due diligence and let those folks go
8 before nightfall especially, and I thought it could have
9 been done or should have been done by the end of the
10 business day.

11 I went home that night thinking that it had
12 been rectified until I heard the news Saturday morning,
13 Saturday night, whenever it came on Channel 9, 2,
14 whatever it was. So I thought it had been undone. I
15 really did.

16 Now, hindsight is 20/20, naivety, whatever you
17 want to call it, an experience, but I really thought it
18 had been taken care of when we left. I really did. And
19 maybe Judge Eriksson may have a different view of that
20 when he gets in here because of his experience in both
21 criminal and being here longer, but maybe I was just too
22 hopeful, I guess.

23 Q The reason I ask you is when Judge Sloop was
24 before the panel that found probable cause on this
25 matter, the investigative matter, one of the judges on

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

62

1 the panel said she couldn't believe he didn't know how
2 long it took to get somebody out of jail and because he
3 told them, I don't know how long it takes. She says I
4 was shocked basically because it took so long.

5 A Eight hours, it certainly doesn't take that
6 long when I went and bonded out, you know, clients. So,
7 and that was, you know, less routine than this. You
8 think there would be -- so, I was amazed too and maybe
9 every situation is different, but, you know --

10 Q I just have a couple, two more quick questions
11 for you, judge.

12 A Okay.

13 Q Judge, the orders to get these people out were
14 ROR orders, they were released on their own
15 recognizance; is that correct?

16 A I believe that's what we talked about, yes.

17 Q So they didn't have to post bonds, they were
18 just to be released?

19 A Yes.
20 Q Immediately at least you thought?
21 A At least I thought, right.
22 Q And, secondly, is it your opinion that Judge
23 Sloop, with some education or with some sensitivity
24 training or whatever he needs is fit to continue to
25 serve on the bench?

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

63

1 A I just answered that, yes.
2 Q Okay.
3 A I think whatever he needs to refocus, whatever
4 he needs to make sure it doesn't happen again, make sure
5 he anticipates things better like this, if he wants the
6 benefit of my lesser experience, my view or my way of
7 doing things, i.e., counting files at the beginning, I
8 count people at the beginning.
9 Now, see, I have the benefit of training with
10 different judges and I count people at the beginning and
11 take role so I know who's there and so I know at the end
12 who would be left over. And I also have the benefit of
13 having an experienced bailiff who goes above and beyond
14 what most deputies do. I've learned this, you know
15 Chris.
16 Q Uh-huh.
17 A And he actually talks to people, takes role
18 and, sir, are you sure you're in the right place, and
19 not everyone does that. So I go above and beyond, not
20 just in personality because of my personality, but
21 because that's the way I learned.

22 So, again, I hate to be voisterous about this,
23 but I don't think this could happen to me and I would
24 never want it to happen to me because of the pains that
25 I take in trying to be careful. So if it's that care or

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

64

1 caring that he needs, I think he can get that. That's
2 got back to your original point.

3 MR. LUBET: Thank you.

4 JUDGE HERR: Come full circle there.

5 MR. LUBET: That's all right.

6 MS. ROSS: Thank you.

7 JUDGE HERR: Thank you. Is that all?

8 MS. ROSS: That's it.

9 MR. LUBET: Judge, thank you very much.

10 (Whereupon, the deposition was terminated at
11 5:00 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

65

1 SUBSCRIPTION OF DEPONENT

2

3 STATE OF FLORIDA

4 COUNTY OF SEMINOLE

5

6 I, MARK E. HERR, DO HEREBY CERTIFY that I
7 have this day read the foregoing deposition, and do hereby
8 declare that the same is a true and accurate transcript
9 of the proceedings had at the time and place herein
10 designated.

11

12 DATED this _____ day of _____, 2005.

13

14

15

16

MARK E. HERR

17

18 Sworn to and subscribed before me
19 this _____ day of _____,

20

21

NOTARY PUBLIC
My Commission Expires:

22

23

24

25

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF SEMINOLE

I, the undersigned authority, certify that
MARK E. HERR personally appeared before me and was
duly sworn.

Witness my hand and official seal this 17th day
of May, 2005.

JUNE M. BUFFORD, RPR
NOTARY PUBLIC - STATE OF FLORIDA
My Commission No. CC 802173
Expires: 1-13-2007

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808

□

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF SEMINOLE

I, JUNE M. BUFFORD, Court Reporter, certify that I was authorized to and did stenographically report the deposition of MARK E. HERR; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this the 17th day of May, 2005.

JUNE M. BUFFORD, RPR

ASSOCIATED COURT REPORTERS, INC.
(407)323-0808